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10 July 1974

NOTE FOR THE RECORD

SUBJECT: Employment of [redacted] as Chairman,
Security Committee, USIB

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1. As the attached memorandum indicates, the AO/DCI has reviewed alternate methods of employing [redacted] in order to try and pay him more than \$10,500 a year (the difference between his annuity and the pay of the position). After reviewing our regulations and coming up with the same conclusions as the AO/DCI, I talked to attorneys in the Office of General Counsel, Civil Service Commission, to see if they could think of a way to get around the pay-limits problem. I explained the facts as relayed to me by the AO/DCI, i.e., [redacted] is a retired GS-18 under the Civil Service System (FBI) and is to be appointed to a position paying a GS-18 salary; he would work almost every day for between four to six months and then work only intermittently (about one day a week for the rest of the year).

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2. Mr. Manny Schmidt (who works on personal service and independent contractor contracts) stated that [redacted] was either an employee (regardless of whether we called him a consultant or contract employee) or he was an independent contractor. Mr. Schmidt felt [redacted] might be an independent contractor if he were employed to prepare a report for the Committee or to be a member of the Committee. Mr. Schmidt felt that it would be extremely difficult, if not impossible, to prepare a legal document that would cast [redacted] as Chairman of the Security Committee, into the role of independent contractor. A contract such as this probably would not withstand legal scrutiny, or pass the "smell test." We agreed that the Chairman is a policy-making or executing position and the responsibilities are simply not those of an independent contractor. Therefore, [redacted]

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would be an employee. (Mr. Schmidt also noted that I said the Director would "appoint" [redacted] which is another indication of an employer-employee relationship.) As an employee, [redacted] can only make in salary the difference between his annuity and the salary of the position he is appointed to fill. The same limitation applies to an annuitant-consultant

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3. I thereafter spoke to Mr. Harry Gastley, a specialist in retirement matters. He confirmed much of what Mr. Schmidt had said. Mr. Gastley also said that even if we were to employ [redacted] for only six months instead of a year, he could not be paid \$10,500 for six month's work but could receive only about \$5,200. (The annuity allocated to the period of employment--about \$12,800--subtracted from the pay of the position allocated to the period of employment--\$18,000--leaves what may be paid--\$5,200.)

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[redacted]
Office of General Counsel

Attachment

cc: AO/DCI w/background